IN THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

U.S. EQUAL EMPLOYMENT	§	
OPPORTUNITY COMMISSION,	§	
Plaintiff,	§	
	§	C.A. NO. 4:09-cv-03062
and	§	
	§	JURY TRIAL
ANEDA BIRKNER,	§	
Plaintiff-Intervenor	§	
	§	
v.	§	
	§	
GUARDSMARK, LLC	§	
,	§	
Defendant.	§	

DEFENDANT'S MOTION TO DISMISS INTERVENING COMPLAINT; ALTERNATIVELY MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS

COMES NOW Defendant Guardsmark, LLC ("Guardsmark"), by and through counsel, and moves to dismiss the Complaint in Intervention ("Intervening Complaint") of Intervening Plaintiff Aneda Birkner ("Intervening Plaintiff") pursuant to Federal Rules of Civil Procedure 12(b)(4) - (5) for insufficient process and/or insufficient service of process and 4(m) for her failure to properly serve the summons within 120 days of filing the Intervening Complaint. Alternatively, Guardsmark moves for partial judgment on the pleadings under Federal Rule of Civil Procedure 12(c) as to Intervening Plaintiff's Equal Pay Act and Title VII Hostile Work Environment Claims on the grounds that Intervening Plaintiff has failed to satisfy the pleading burdens as articulated by the U.S. Supreme Court in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009).

In further support of this Motion, Guardsmark relies upon its Memorandum of Law in Support of Defendant's Motion to Dismiss Intervening Complaint; Alternatively Motion for Partial Judgment on the Pleadings filed contemporaneously herewith, and the entire record of this matter.

Respectfully Submitted:

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Attorneys for Guardsmark LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of June, 2010, a copy of the foregoing electronically filed Defendant's Motion to Dismiss Intervening Complaint; Alternatively Motion for Partial Judgment on the Pleadings was served on the parties listed below by first class mail, postage prepaid, unless said party is a registered CM/ECF participant who has consented to electronic notice, and the Notice of Electronic Filing indicates that Notice was electronically mailed to said party:

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s/Edward R. Young
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